

# Ex. 5 Attorney Client (AC)

FirstEnergy Solutions, which sought bankruptcy protection from its creditors in March in a case that continues, is preparing to ask state lawmakers to create a special funding system to funnel more money from Ohio consumers and business to the company's cash-starved nuclear power plants. The proposal would create "zero emission credits," or ZECs, patterned after "renewable energy credits," or RECs, that helped jump-start Ohio wind and solar projects. FES has not released details such as how much the ZEC program would cost customers or whether it would end at some point in the future. Previous ZEC proposals have languished in legislative committees. (*Plain Dealer file*)

**By John Funk, The Plain Dealer**

CLEVELAND, Ohio - FirstEnergy Solutions is hoping to emerge from federal bankruptcy court as a competitive nuclear power company, backed by new state subsidies and operating under new federally mandated market rules.

The company already has begun the groundwork for that transformation, hiring a team of experienced lobbyists who have been quietly talking to state lawmakers about developing new legislation to subsidize the continuing operation of the Perry nuclear power plant in Lake County and the Davis-Besse nuclear plant in Ottawa County, east of Toledo.

Simultaneously, the company has begun bankrolling a new grassroots campaign consisting of locally elected mayors, commissioners and school officials, as well as trade unions and economic development groups.

The Ohio Clean Energy Jobs Alliance became public about 10 days ago with a news conference in the Ohio statehouse aimed at letting people know what the company believes the impact of closing the Perry and Davis-Besse plants will have on Ohio's economy.

The event occurred the day after the Lordstown Energy Center, the state's latest large gas turbine power plant began operating. Gas-fired power plants have been one of the primary reasons nuclear plants are failing.

The FES plan is to convince state lawmakers that saving the nuclear plants with new customer-paid subsidies is a better and less costly scenario than letting them close, said David Griffing, FES vice president of government affairs and Donald Moul, president and chief nuclear officer of FES generation companies, in an interview this week.

Griffing said details of the subsidy - such as how much more an average retail customer would have to pay and for how long - have not been worked out. The legislation would be the company's third effort to convince lawmakers that saving the power plants is worth spending the political capital.

The company's first two efforts to win nuclear subsidies through a program of "Zero Emission Credits" stalled amidst heavy opposition from the Ohio Consumers' Counsel and the Ohio Manufacturers' Association as well as a number of environmental groups. The legislation never made it out of House and Senate public utilities committees despite multiple hearings.

The first proposal would have added about \$5 a month to the electric bills of homes served by FirstEnergy, but much more to commercial and industrial bills, raising \$300 million a year in new money for the company for 16 years.

A second, amended proposal would have cost consumers about \$2.50 a month extra, or \$30 a year for 12 years. Commercial and industrial customers would have seen an additional 5 percent on top of their monthly bill, or \$3,500, whichever was lesser and would have raised about \$180 million a year in new money for the company.

"Are we going to take another run at this? The answer is yes," Griffing said. "So we have been talking to people. We have been talking about what didn't work last time, you know what were their concerns last time.

"What does a new one need to look like? So we have been structuring that and pulling that together. We haven't circulated that [specific proposal] with anyone yet, anywhere."

That will change after Nov. 6 when Ohioans decide who will be the next governor and some seats could change in the House and Senate, leading to possible changes in legislative leadership.

"Our plan, post-election, we would begin to work with the leadership and we believe this is something that needs to be on the legislative agenda very early in 2019," said Griffing.

"You will have a new governor in place with a whole slew of new leaders. We have been doing our best to educate both sides. We are not trying to pick winners and losers."

The company hopes lawmakers would approve the plan by June or July, allowing it to order new fuel for Davis-Besse, now scheduled to shut down in May 2020.

FES is also looking at the success of nuclear companies in Illinois, New York and New Jersey in winning state subsidies by arguing that nuclear power plants are economic drivers as well as sources of "carbon-free" electricity. In other words, nuclear energy is clean energy, at least when compared to coal and natural gas.

In New Jersey, a bill approved in May of this year authorized a state-wide rate increase raising about \$300 million annually to help the Public Service Electric & Gas Co. keep its nuclear plants running. The bill included a new rule mandating an increase in "clean energy," eliminating all fossil fuel (such as coal, gas and oil) by 2050.

And in Illinois, a 2016 measure to subsidize Exelon nuclear plants and save the jobs they provide won support, or at least no opposition, from the Natural Resources Defense Council, the Sierra Club and the Environmental Defense Fund because the bill included subsidies for energy efficiency and renewable energy.

Moul explained the argument this way: "Ninety percent of the zero carbon generation in Ohio comes from Davis-Besse and Perry. If you really care about carbon, these plants are very important.

"If you really believe a megawatt of generation coming from wind or solar is worth a boost [subsidy], why is nuclear any different?" he argued.

The laws creating the nuclear subsidies in New Jersey and Illinois also mandate statewide rate increases, affecting every household and business in the state, whether or not they buy power from the utility owning the nuclear plants.

Will FES try that in Ohio this time around?

"That's a great question," said Griffing. "That would take some negotiation, but our view is that the zero-emission generation is a value to the entire state."

The company may have already tipped its hand on the issue of statewide rate increase versus utility-only in a recent filing with the Federal Energy Regulatory Commission.

FERC in June tossed out certain market rules PJM Interconnection had proposed and asked for new rules that allow states to subsidize some power plants without affecting the entire 12-state PJM market. FERC also asked for written comment from the utilities and others.

In its FERC filing FES argues that a statewide rate increase to subsidize a power plant makes sense.

Given the Commission's intent to "confine the cost of a particular state policy decision to consumers within the state that made that policy decision," the most efficient approach may be to develop an average, state-wide ... capacity rate paid for by all load [customers] within that state," the company's lawyers wrote.